

URGENT ACTION

MURDER VICTIM'S FAMILY OPPOSE OHIO EXECUTION

Johnnie Baston, a 36-year-old African American man, is scheduled to be executed in Ohio on 10 March. He was sentenced to death in 1995 for a murder committed during a robbery in 1994.

Chong Hoon Mah, a South Korean immigrant to the USA, was shot and killed on 21 March 1994 during a robbery of one of the retail shops that he owned in Toledo, Ohio. Johnnie Baston was arrested after police received information that he was involved in the crime. He told police that he had participated in the robbery with an accomplice named "Ray", a high-ranking gang member, who was the gunman. However, police were never able to identify or locate this person, and came to believe that Johnnie Baston acted alone. He was charged, pleaded not guilty, and chose to be tried before a three-judge panel rather than a jury. The judges sentenced him to death on 27 February 1995, finding only one mitigating factor – his young age – and ruling that this was outweighed by the nature of the crime.

Johnnie Baston has been on death row for 16 years, most of his adult life. At the time of the crime, he was just past his 20th birthday. He had been abandoned by his biological mother soon after he was born, and has never seen her since, his only communication with her being a letter from her after he was sent to death row. As a young boy, he was adopted by his aunt after she saw his bruising and malnourishment, evidence of a pattern of physical abuse and neglect in his first years at the hands of his father. At the clemency hearing before the Ohio Adult Parole Authority on 3 February 2011, his adoptive mother recalled that his parental abandonment had led to serious behavioural problems in his teenage years, culminating in her throwing him out of the home about a week before the crime.

Also at the clemency hearing was one of the prosecutors from the original trial. She said that Chong Mah's son had asked her to appear to reiterate the victim's family's opposition to the execution of Johnnie Baston because of their respect for human life. Last year she and another prosecutor signed sworn statements that the Mah family had been opposed to the death penalty at the time of the trial as well. Last month, Chong Mah's son also signed a statement that "my family and I are opposed to Mr Baston being executed".

A senior Justice on the Ohio Supreme Court has called for abolition of the state's death penalty, describing it as a "death lottery" (see overleaf). By way of illustration, Johnnie Baston's clemency petition points to the case of another defendant who was tried in the same county (Lucas County) for a comparable crime in 1994 (shooting of a store manager at close range during a robbery) and was sentenced to life imprisonment. The petition also pointed to the disproportionate number of death sentences passed against black defendants in Lucas County. Of the 21 death sentences passed there since 1981, in 16 cases the defendant was black, and in four cases white.

The parole board voted 9-0 against recommending clemency. Their recommendation is not binding on the Governor.

PLEASE WRITE IMMEDIATELY in English or your own language, in your own words:

- Acknowledging the seriousness of the crime for which Johnnie Baston was sentenced to death;
- Calling on the governor to commute the death sentence and to work to lead Ohio away from the death penalty.

PLEASE SEND APPEALS AS SOON AS POSSIBLE, AND BEFORE 10 MARCH TO:

Governor John Kasich
Riffe Center, 30th Floor, 77 South High Street
Columbus, Oh 43215-6117, USA

Fax: +1 614 466 9354

Email: <http://governor.ohio.gov/ShareYourIdeas.aspx>

Salutation: Dear Governor

Also send copies to diplomatic representatives of the USA accredited to your country. Please check with your section office if sending appeals after the above date.

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ADDITIONAL INFORMATION

Amnesty International opposes the death penalty in all cases, unconditionally. To end the death penalty is to abandon a degrading, destructive, diversionary and divisive public policy that is not consistent with widely held values. It not only runs the risk of irrevocable error, it is also costly, in social and psychological terms as well as to the public purse. It has not been proved to have a unique deterrent effect. It tends to be applied in a discriminatory way, on grounds of race and class. It diverts resources that could be better used to work against violent crime and assist those affected by it. The death penalty extends the suffering of the victim's family to that of the condemned prisoner.

Public and political support for the death penalty has weakened in recent years, and the rate of death sentencing has declined. One possible factor contributing to this decline is the adoption across the US states of life without the possibility of parole. Ohio adopted this as a sentencing option in 1996, a year after Johnnie Batson's trial. In the decade from 1990 to 1999, 127 death sentences were passed in Ohio, at an average of nearly 13 per year. In the following decade, the 43 death sentences were passed in the state, at an average of just over four per year.

In 2008, then Senior US Supreme Court Justice John Paul Stevens revealed that he had decided, after more than three decades on the country's highest court, that the death penalty was a cruel waste of time. "I have relied on my own experience", he wrote, "in reaching the conclusion that the imposition of the death penalty represents the pointless and needless extinction of life with only marginal contributions to any discernible social or public purposes". In Ohio, Senior Justice Paul Pfeifer of the state Supreme Court, who when he was a state legislator was a co-author of Ohio's death penalty statute enacted in 1981, wrote in January 2011: "I helped craft the law, and I have helped enforce it. From my rather unique perspective, I have come to the conclusion that we are not well served by our ongoing attachment to capital punishment... I ask: do we want our state government – and thus, by extension, all of us – to be in the business of taking lives in what amounts to a death lottery? I can't imagine that's something about which most of us feel comfortable. And, thus, I believe the time has come to abolish the death penalty in Ohio". Also in January, a former Director of the Ohio Department of Corrections, who witnessed 33 executions between 2001 and 2010, urged Ohio officials to consider abolition of the death penalty.

There have been 1,242 executions in the USA since judicial killing resumed there in 1977, including eight so far this year. Ohio has executed 42 people since resuming executions in 1999. Thirty-two of them were put to death under a three-drug lethal injection process (sodium thiopental, pancuronium bromide, and potassium chloride) used in most US death penalty states to anesthetize, paralyze and kill the prisoner. In November 2009 the Ohio authorities responded to ongoing legal challenges to the three-drug procedure – and to events two months earlier when the state's lethal injection team attempted and failed over the course of two hours to execute death row prisoner Romell Broom – by changing to a one-drug protocol whereby the condemned inmate would be injected with five grams of sodium thiopental, essentially an overdose of this anaesthetic. Having executed 10 prisoners in this way between December 2009 and February 2011, but now faced with the nationwide sodium thiopental shortage after the only US supplier, Hospira, ceased production of this drug, Ohio has decided to switch to another barbiturate, pentobarbital. The execution of Johnnie Baston is due to become the first carried out in Ohio with this drug. From late 2010, Oklahoma turned to this drug as the substitute for sodium thiopental in its three-drug execution method.

In January, the Ohio authorities were contacted by the Denmark-based pharmaceutical company Lundbeck Inc. The letter states: "In the wake of the decision of Hospira to cease production of sodium thiopental, which is used in the execution of prisoners, Lundbeck has become aware that the State of Ohio has now decided to use Lundbeck's product Nembutal® (pentobarbital sodium injection USP) for this purpose. Lundbeck is adamantly opposed to the use of Nembutal, or any other product for that matter, for the purpose of capital punishment... [W]e urge you to discontinue the use of Nembutal in the execution of prisoners in your state because it contradicts everything we are in business to do – provide therapies that improve people's lives."

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